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July 12, 2016

Hon. Tom Wheeler
Chairman
Federal Communications Commission
445 12th St. S.W.
Washington, D.C. 20554

RE: 2014 Quadrennial Review *et al.*, MB Dockets 14-50, 09-182 and 07-294

Dear Chairman Wheeler:

We write to follow up on one of the five minority ownership proposals, described in our letter of June 24, 2016 ("MMTC June 24 Letter") that is reportedly included in your June 27, 2016 Quadrennial R&O on circulation to the full Commission in response to *Prometheus Radio Project v. FCC*, Case No. 15-3863 (3d Cir., slip op., May 25, 2016) ("*Prometheus III*").

The item is our proposal to extend the Cable Procurement Rule to all communications platforms. *See* MMTC June 24 Letter, pp. 3-7. We have stated that "extension of the highly successful MVPD procurement rule to all regulatees - and a request for compliance by Title I services backed up by a referral to the GAO – would be the single most powerful step the Wheeler Commission could take to establish its civil rights legacy for years to come" (emphasis in original). *Id.* at p. 7.

At today's hearing of the House Subcommittee on Communications and Technology, Congresswoman Yvette Clarke asked whether you would recommend approval of this proposal. You responded that extending the Rule to additional platforms could raise a question of "strict scrutiny."

The statutory provision, codified at 47 U.S.C. §554(d)(2)(E), provides that an MVPD shall, "to the extent possible", "encourage minority and female entrepreneurs to conduct business with all parts of its operation[.]" The rule, 47 C.F.R. §76.75(e), tracks the statute and calls for "[r]ecruiting as wide as possible a pool of qualified entrepreneurs from sources such as employee referrals, community groups, contractors, associations, and other sources likely to be representative of minority and female interests."

Until your testimony today, no one has ever suggested that the Rule presents any constitutional question. Supporters and opponents of affirmative action agree that if a regulation "merely required stations to implement racially neutral recruiting and hiring programs, the equal protection guarantee would not be implicated." *Lutheran Church-Missouri Synod v. FCC*, 141 F.3d 344, 351 (D.C. Cir. 1998), *pet. for reh'g denied*, 154 F.3d 487, (D.C. Cir.) *pet. for reh'g*

Hon. Tom Wheeler
July 12, 2016
Page 2.

en banc denied, 154 F.3d 494 (D.C. Cir.) This is settled law. Of course if the Rule actually implicated strict scrutiny, you would not be enforcing it in the first instance.

Sincerely,

Kim Keenan

Kim Keenan
President and CEO

David Honig

David Honig
President Emeritus and Senior Advisor

cc: Hon. Mignon Clyburn
Hon. Ajit Pai
Hon. Michael O'Rielly
Hon. Jessica Rosenworcel
William Lake, Esq.
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